

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mike Knell, dba JTR Publishing,

Complainant,

vs.

Pacific Bell Telephone Company and AT&T
Communications of California, Inc.,

Defendants.

Case 01-07-034
(Filed July 25, 2001)

Mike Knell, representing himself, complainant.

Michelle R. Galbraith, Attorney at Law, for Pacific Bell
Telephone Company, defendant.

Darlene M. Clark, Attorney at Law, for AT&T
Communications of California, Inc., defendant.

OPINION RESOLVING COMPLAINT

Summary

In today's decision, we find that Pacific Bell Telephone Company (Pacific) and AT&T Communications of California, Inc. (AT&T) did not violate our rules and regulations in handling Complainant's service quality problems and did not improperly require that Complainant communicate with them in writing. We

also find that AT&T did not improperly restrict Complainant's long distance service.

We find that AT&T violated Pub. Util. Code § 2891.1 when Complainant's residential number was published in directory assistance and on the Internet. We also find that AT&T did not fully credit Complainant for listings problems. We order Pacific to refund a \$6.00 overcharge. We note that Complainant's efforts to get better service quality by switching to another service provider caused additional problems, without resolving his service quality issues, and order AT&T to provide Complainant with on-line management of his business telecommunications needs. We also require AT&T to provide a compliance report to ensure that AT&T is in compliance with statutes and regulations governing the release and publishing of non-listed and non-published information.

Procedural Background

We held two prehearing conferences (PHC) on November 5, 2001, and January 29, 2002. The parties agreed to a Commission Telecommunications Division investigation of Complainant's service quality allegations between the two PHCs and agreed to attempt to informally resolve Complainant's allegations of listings problems. Informal dispute resolution was unsuccessful. Complainant filed a motion to file an amendment to the complaint on January 29, 2002, which was opposed by Pacific and AT&T. Although the amendment raised new issues, including disputes about three additional phone lines, most of the issues were related to the service quality and listing concerns raised in the complaint. By a February 26, 2002 Administrative Law Judge (ALJ) ruling, the motion to amend the complaint was granted and hearings were continued for approximately two months to permit Defendants to resolve outstanding

discovery issues and prepare testimony. Complainant's reliance in the motion on AT&T and Pacific documents obtained during discovery prompted the ALJ's ruling to conclude that this proceeding would be more efficient if submitted on written testimony and briefs.

Pacific filed a motion to dismiss itself as a defendant on March 22, 2002. By a May 17, 2002 ALJ ruling, that motion was granted in part and denied in part. Issues concerning complainant's directory listings were dismissed as to Pacific, because Pacific's resale tariff, under which AT&T provides service to Complainant, places liability for directory listings mistakes on the retail provider. Triable issues of fact, including applicability of the statute of limitations, remained concerning service quality, application of Rule 11, and overbilling.

A hearing was held on June 5, 2002 to receive written testimony and to permit parties to make opening statements. Only Complainant made an opening statement. Parties filed opening briefs on July 3, 2002 and reply briefs on July 26, 2002. AT&T requested the opportunity to raise evidentiary objections to Complainant's reply brief. By ALJ ruling, parties were permitted to file supplemental briefs to raise concerns about information contained in reply briefs, including relevance, materiality, beyond the scope of the proceeding, etc., and this proceeding was deemed submitted on the filing of those briefs on August 23, 2002.

Factual Background

Complainant had four telephone lines with Pacific, two residential and two business, that he moved to AT&T's resale competitive local exchange service in April 1997, because he was dissatisfied with Pacific's service quality. Complainant continued to experience service quality problems under resale

service and also faced problems with incorrect listings, publishing his home address with his business listing, and incorrect billing. Complainant's service quality problems included outages, static, and the inability to complete credit card transactions and facsimile transmissions. Complainant moved the two residential lines to AT&T's broadband service in November 1999 when AT&T began offering that service. Complainant experienced listing and billing problems after switching to broadband. Complainant has one line with Pacific.

AT&T had difficulties when it initially offered resale local service and broadband, prompting listing and billing problems. AT&T continually worked to address Complainant's listing and billing problems. AT&T monitors Complainant's listings under its high profile listings practice to ensure that Complainant does not experience recurring problems with his listings.

Pacific changed the cable pairs which serve Complainant two times, first in 1996 and again in 2001. Pacific has responded to each request from AT&T to test Complainant's lines when Complainant experienced service quality problems. In September 2001, Pacific, on its own initiative, rebuilt the serving terminals to Complainant's neighborhood as a preventative measure. Pacific's records indicate AT&T has not forwarded Pacific any trouble reports (a work item generated by Pacific's customer service when a customer has a service problem) concerning Complainant since January 2001.

Both Pacific and AT&T, since 1997 and 1999 respectively, require that Complainant communicate with them in writing when Complainant needs customer service. Pacific's records on why it imposed its Rule 11¹ restriction are

¹ Tariff Rule 11 addresses the limited circumstances under which the utility may refuse to transact business with a customer, other than in writing.

incomplete, due to the length of time that has passed, but documents introduced in this proceeding indicate that Complainant made numerous calls to Pacific employees and that those employees believed that Complainant's persistence was an attempt to annoy or harass. In addition, Pacific employees reported that Complainant generally threatened Pacific employees. AT&T has no tariff rule comparable to Rule 11, but it imposed a restriction on Complainant's contacts after he recorded calls with AT&T employees without their consent and persistently called employees other than those involved with consumer service, including calls to employee's homes.

Complainant also has a dispute with Pacific over a \$6.00 charge for a jack that he states was already there.

Parties' Contentions

Complainant alleges that AT&T has discriminated against him both in service and in application of its rules, including improper long distance restrictions, in part because he complained about the problems. Complainant also alleges that AT&T violated Pub. Util. Code §§ 451, 2890(c) and 2891.1. Complainant further alleges Pacific's facilities are defective and that Pacific improperly imposed its Rule 11 restriction. Complainant seeks the following relief: 1) repair of allegedly defective lines; 2) rescission of written contact restrictions; 3) determination of responsibility for problems with listings; 4) establishing a single point of contact at each company who will communicate by fax, phone or e-mail to deal with service problems, billing problems, and problems with listings; and 5) levying of fines for violations of Commission rules and regulations.

AT&T contends it complied with its tariffs and Commission rules and regulations, that Complainant's testimony is unreliable, and that many of

Complainant's allegations are barred by the statute of limitations. Pacific contends that Complainant is not entitled to replacement of his telephone lines, because they are not defective, that Pacific sustained the disputed \$6.00 jack charge, and that the Rule 11 restriction was imposed based on numerous and persistent abusive calls.

Discussion

The issues we address concern alleged violations of Commission rules and regulations by AT&T in the areas of service quality, listings, and overbilling and by Pacific in the areas of service quality and overbilling. In addition, we examine whether AT&T and Pacific improperly restricted Complainant's contacts.² Although we find no outright violation by Defendants of our rules and regulations in the areas of service quality, overbilling and written contact restrictions, it is clear that Complainant's business lines resold by AT&T do not provide the service quality Complainant expected for his business. Similarly, the restrictions on Complainant's contacts with Pacific and AT&T for his business lines do not permit Complainant the ability to operate his business in the manner necessary for it to function efficiently.

² The issues identified in the scoping memo are: 1) Whether the complaint and amendment state any cause of action against Pacific for telephone lines where Pacific no longer is Complainant's retail service provider; 2) Whether AT&T and/or Pacific have violated any Commission rule, regulation, or order in their handling of Complainant's service quality problems; 3) Whether Complainant's phone listings fail to conform to his terms of service with AT&T; 4) Whether AT&T and/or Pacific have violated any Commission rule, regulation or order in publishing Complainant's unlisted number; 5) Whether Complainant states a currently valid claim against AT&T and Pacific; 6) Whether AT&T and Pacific have followed applicable tariffs and Commission rules, regulations, and orders in restricting Complainant's contacts; and 7) Whether AT&T and Pacific have overcharged Complainant and owe him refunds.

Complainant presented 113 attachments to his testimony and an additional 29 attachments to his briefs. Although we have reviewed all the material Complainant presented, we do not discuss each attachment, because not all of the attachments advance our inquiry into Complainant's allegations. Many documents show problems Complainant experienced, including Defendants' handling of those problems, but those problems, however frustrating, fail to rise to violations of Defendants' tariffs and our rules and regulations.³ Other documentation shows problems that were resolved before Complainant filed this complaint or during the pendency of the complaint. Notwithstanding the failure to show violations, the documentation does demonstrate Complainant's unsuccessful attempts to resolve one set of problems by switching carriers or types of service that only unleashed more problems without resolving the intended problem.

We affirm the ALJ rulings granting Complainant's amendment to complaint and partially granting Pacific's motion to dismiss.

**1. Defendants Provide Reasonable Service
Quality to Complainant**

Pub. Util. Code § 451 requires a utility to furnish "such adequate, efficient, just, and reasonable service" as is necessary to "promote the safety, health, comfort, and convenience of its patrons." Pub. Util. Code § 2896(c) requires telephone corporations to provide reasonable statewide service quality standards for network technical quality and repair.

³ Under Pub. Util. Code § 1702, Complainant must prove by a preponderance of evidence that AT&T and Pacific have violated Commission rules and regulations. (Foreman v. Pacific Bell (1991) 39 CPUC 2d 498.)

Complainant has shown that he had service quality problems at various times with four of his lines, and especially one of his two business lines, prior to filing this complaint and alleges those problems violate § 451. Complainant reported more problems with his business lines than his residential lines even before he switched the residential lines to broadband service.⁴ Complainant's and Pacific's records differ slightly concerning the extent of Complainant's reported service quality problems from late 1996 through 1997. (Exhibit 1, various attachments, and Exhibit 3, Attachment 2.) Pacific relies on trouble reports, and Complainant relies on correspondence with Pacific and AT&T, among other documentation. For example, AT&T issued a credit for a September 17, 1997 trouble report (Exhibit 1, Attachment 11), but Pacific does not list that report. Complainant also states that he reported a service outage to a Pacific supervisor on October 29, 1996. Pacific has no record of that report, although Complainant states Pacific made repairs on November 6, 1996. (Exhibit 1, p. 8.) Despite these discrepancies, replacement of a Digital Added Main Line (DAML) unit, following the replacement of a two-pair buried service wire with a five-pair buried service wire, illustrates that there were ongoing problems in the second half of 1996. (Amendment to Complaint, Attachments 4 and 12.)⁵

Pacific and Complainant disagree as to whether trouble was found on one business line when Complainant reported problems in November 2000.

⁴ Reported problems on Complainant's residential lines were infrequent and resulted in only one repair. Reported problems on one business line, although more frequent, resulted in no trouble found and no repairs.

⁵ Although Pacific replaced the wires on Complainant's property, Pacific did not charge Complainant for that work.

Complainant relies on the AT&T technician's report that stated Complainant's credit card did not work on that line. (Exhibit 1, Attachment 16.) Although Pacific states it did not find a problem, on January 30, 2001 Pacific did replace the cable pair it had provided to Complainant in 1996. Complainant had reported static on that line twice in September 2000 and once in January 2001.

Complainant has theories about the cause(s) of service quality problems on his lines, including defective pairs and non-paired wires that receive other signals. Complainant and Pacific disagree on the meaning of notations in Pacific's documentation that Complainant alleges proves these theories. Beyond the admittedly defective DAML unit, we need not determine the precise cause of Complainant's service quality problems, because Defendants addressed them by making appropriate repairs and issuing credits.

Complainant also alleges Pacific failed to make timely repairs and states Pacific failed to show up for eight days in 1996 when Complainant reported a problem that Pacific stated was due to a cable failure. Pacific's records show that on some occasions Pacific dispatched a technician on the same day it prepared a trouble ticket; on other occasions Pacific arrived the next day; one time two days elapsed and on another occasion it was three days before a technician visited Complainant's residence. Some trouble tickets do not identify the response time. (Exhibit 3, Attachment 2.) In D.01-12-021, we found that Pacific had failed to maintain or improve service quality, a condition of the SBC/Pacific Telesis merger, due to the increase in mean time to restore service to residential customers.⁶ However, not all trouble Complainant reported was loss

⁶ We adopted annual average standards of 29.3 hours for Pacific's initial out-of-service repair interval and 39.4 hours for its repeat out-of-service repair interval and

Footnote continued on next page

of service. Complainant also reported static and other interference problems. Although delays in restoring Complainant's service were a problem experienced by other Pacific customers at the time, Pacific made necessary repairs, issued credits, and offered Complainant \$2,000 for "lost business" and "personal time," which he declined. (See Amendment to Complaint, Attachments 4 and 12.)

We find that AT&T and Pacific have not violated Pub. Util. Code § 451 in providing service to Complainant during the two years prior to the filing of this Complaint.

Defendants note that Complainant's service quality allegations are barred by the applicable statute of limitations. Section 735 limits claims to two years preceding the filing of a complaint, and Complainant experienced problems prior to that time. (*See Pacific Bell vs. AT&T Communications of California Inc.*, D.98-05-038, 80 CPUC 3d 302.) Complainant responds that the statute of limitations does not apply because he recently discovered information concerning his service quality allegations.

We disagree with Complainant. We have ruled that the statute of limitations is tolled until a plaintiff discovers or should have discovered the facts essential to a cause of action. (*TURN vs. Pacific Bell*, D.93-05-062, 49 CPUC 2d 299, 311, citing *CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal. App. 3d 1525, 1536, *Leaf v. City of San Mateo* (1980) 104 Ca. App. 3d 398.) We further explained that the statute of limitations begins to run when a plaintiff is aware of his or her injury and its negligent cause. (*TURN vs. Pacific Bell*, D.94-04-057, 54 CPUC 2d 122, 126.) Service quality issues are obvious, and Complainant

established a penalty mechanism, imposed monthly, should Pacific fail to meet those standards.

reported problems with his service to Defendants. Increased knowledge of why service quality problems existed, in and of itself, is insufficient to toll the statute of limitations. Instead, Complainant must discover a negligent cause of service quality problems that violated our rules and regulations. Nothing in the record indicates Defendants concealed any information concerning service quality problems experienced by Complainant, including a negligent cause of Complainant's problem that directly violated Complainant's safety, health, comfort, and convenience. Thus, any service quality problems that existed over two years prior to the filing of this complaint are barred by the statute of limitations.

Complainant currently has no service quality problems and has not reported trouble on his lines since before he filed this complaint.⁷ Pacific replaced a cable pair AT&T stated was defective after Complainant reported problems four times with static and dropped calls. (*See* Amendment to Complaint, Attachment 21.)

Although we find that Defendants did not violate our rules and regulations in providing service to Complainant, Complainant did not receive the level of service he expected and that he believed necessary to successfully run his business. AT&T admits that Complainant would receive better service for his business lines if his business, now located in his home, instead were located in a commercial area. Further, Complainant states he receives better service quality

⁷ Complainant reported a service quality problem in May 2002 in order to have Pacific run tests on his line, although Complainant was not experiencing service quality problems. Pacific ran the tests and found no problems.

with his broadband service, only available to residential subscribers, than with his resale business service. Defendants do not disagree with that assertion.

Complainant switched service providers in the hopes of obtaining better service quality, but found that he was unable to do so through resale service. Although we do not find that Defendants violated our rules in provisioning service to Complainant, a business using credit cards would expect that the service provided would enable transactions to be conducted. Complainant had difficulty with credit card transactions and facsimile transmissions. Service quality problems were intermittent, but one line had two cable pair replacements in slightly over four years. Thus, we find that Defendants could have addressed Complainant's service quality problems generically in order to ensure that Complainant could conduct his business. As discussed below, we will order AT&T to provide Complainant with a more comprehensive solution to his communications issues.

2. Listings

Complainant contends Pacific and AT&T dropped his operator listings at least 24 times and did not credit him for all the times his listings were not published. Complainant further contends that his unpublished residential phone number and address have been published in directory assistance and in an Internet directory. Complainant lists seven occasions when he had problems with listings but allegedly did not receive timely resolution of the problem. (Exhibit 1, pp. 46-50.) Complainant further alleges that one credit for listings problems was incomplete. As Complainant notes, Attachment 89 (a record of directory assistance changes) to Exhibit 1 does not include JTR Publishing from August 17, 1998 to October 15, 1998 and lists Complainant's home address under a second JTR Publishing listing from January 13, 1998 through August 17, 1998

and from October 15, 1998 to November 10, 1998. Attachment 89 also shows that one of Complainant's residential phone numbers was listed with a partial address on May 6, 1997, was listed with a post office box number on November 17, 1998, was deleted on June 30, 1999, and again was listed with the post office box on October 10, 1999. Complainant's Amendment to Complainant provides copies of AnyWho.com listings that include Complainant's address and one listing that includes Complainant's residential telephone number. (Amendment, Attachments 28 and 30.)

AT&T states Complainant's business directory listings were incorrect for limited periods of time and that Complainant's residential address was deleted from his business listings on October 30, 2001. AT&T admits that AT&T's Internet directory continued to publish Complainant's residential address until December 5, 2001. AT&T states that at the time Complainant requested an unlisted number for his computer modem, there was a misunderstanding over whether Complainant wanted this residential listing non-listed (appears in directory assistance) or non-published; when Complainant complained, however, AT&T promptly changed the listing from non-listed to non-published. AT&T admits this residential number was published in directory assistance from April 2000 and June 2000 and between May 18 and June 7, 2001. (Exhibit 4, pp. 17-18.) AT&T shows credits provided to Complainant for most of the period referenced by Complainant. (Exhibit 4, Attachment 3.) Of those adjustments, two appear to cover listings problems identified by Complainant.

Section 2891.1 prohibits carriers from selling or licensing lists of residential subscribers that include the telephone number of subscribers assigned an unlisted or unpublished number. Although we require competitive local exchange carriers to make available their directory listings to incumbent local exchange carriers for release to third party directory assistance vendors, we

exclude from that requirement unpublished listings and related customer privacy rights. (D.00-10-026, 2000 Cal. PUC LEXIS 796 *16.) Complainant's non-published residential number and address were included in Pacific's directory assistance and on AT&T's Internet directory. AT&T states it did not sell Complainant's number. However, AT&T did grant Pacific and Anywho.com the right to publish Complainant's residential address and number; in effect AT&T licensed Complainant's unlisted number. We have found that nonpublished customers have the right to privacy for their addresses. (*See* D.97-01-042, 70 CPUC 2d 661.)

AT&T asserts Complainant's listings claims are barred by the applicable statute of limitations. AT&T states Complainant was aware in 1998 that his residential address was published in directory assistance. Complainant responds that the statute of limitations does not apply because he recently discovered information concerning his listings. Pacific's records, to which Complainant did not have access prior to filing this complaint, show the listings changes by date and phone number and provided Complainant with accurate information on when his listings changed. Complainant's recent discovery of when his listings changed is sufficient to toll the statute of limitations for the purpose of calculating credits owed. Complainant could not have known the exact time period for which he could have received credits, because he did not know the exact dates when his listings changed. AT&T does not address Complainant's claimed overcharges for earlier incorrect listings because AT&T believes they are barred by the statute of limitations. AT&T is incorrect. We will order AT&T to calculate and refund overcharges for incorrect listings in 1998 using the methodology AT&T applied in Exhibit 4, Attachment 3.

Complainant's allegation that publishing his residential address in directory assistance in 1998 violated his privacy is barred by the statute of

limitations. Complainant acknowledges he became aware on several occasions in 1998 that his residential address was being published but felt he had no recourse against Respondents. (Complainant's Appeal, p. 1-20; *see also* Exhibit 1, Attachment 86.) The fact that his address was published in directory assistance was obvious; thus there is no basis for tolling the statute of limitations. Complainant addressed other listings issues in an informal Complaint filed at the Commission in 1999 but apparently did not raise the publishing of his residential address.

We find AT&T violated Section 2891.1 when it released information that allowed Complainant's residential number to be published in directory assistance between April 2000 and June 2000 and between May 18 and June 7, 2001 and on AT&T's Internet directory on or around June 24, 2001.⁸

We do not decide whether AT&T violated Complainant's privacy rights when it published Complainant's residential address on its Internet directory, because at this time we do not appear to have jurisdiction over Internet directory publishing. We have noted that under present regulatory circumstances, Internet services are "offered in an arena unregulated by this Commission or any other State or Federal regulatory body." (D.00-09-043, 2000 Cal. PUC LEXIS 699.)

We decline to fine AT&T for violating Section 2891.1. Publishing Complainant's number in directory assistance occurred twice and publishing it on the Internet occurred for an undetermined amount of time. However, we are concerned that AT&T lacks sufficient controls to prevent the release and publishing of non-published residential numbers and addresses. If releasing this information is a widespread problem, we will open an investigation to address

⁸ Deliberate violations of Section 2891.1 are grounds for a civil suit. (Section 2891.1(d).)

violations of § 2891.1 and customers' privacy. To assist our consideration of the need for such an investigation, we will order AT&T to provide a compliance report to our Telecommunications Division that provides the number of complaints received by AT&T during the past two years alleging release or publishing of non-listed or non-published information, the number of repeat complaints for releasing or publishing such information, the controls AT&T has in place to prevent release or publishing of such information, and the effectiveness of such controls. In addition, the violation and the continuing listings mistakes were another result of Complainant's attempt to resolve service quality issues by switching carriers. As discussed below, we will order relief designed to avoid future problems.

3. Defendants Resolved or Agreed to Resolve Billing Problems

Complainant contends AT&T overcharged him and could not fix reported billing problems in violation of Pub. Util. Code §451. AT&T provides a list of the credits issued to Complainant and identifies the specific billing problems Complainant experienced when he switched to AT&T resale service and again when he switched to AT&T's broadband service. Although AT&T's bills were incorrect, AT&T corrected them when Complainant brought the problem to AT&T's attention.

Billing problems alone are insufficient to find a violation of our rules and regulations. When the utility resolves the billing problem and issues appropriate credits we can do no more for the customer. Complainant contends Pacific overcharged him when he started service and did not fully credit his account by \$6.00. Pacific does not disagree. Therefore, we will order Pacific to refund Complainant the remaining credit of \$6.00, if Pacific has not issued that credit.

4. AT&T Did Not Improperly Restrict Long Distance Service

Complainant alleges AT&T improperly restricted his long distance service 11 times, often after he corresponded with AT&T's executive complaint team and once after the Commission's Consumer Affairs Branch (CAB) informed him that his service would not be restricted. AT&T responds that Complainant's service was restricted on October 22, 1999, because he did not deposit the full amount of the disputed bill with the Commission, as required under AT&T's tariff. AT&T also disputes that Complainant's service was restricted on August 6, 2001, because the number to which Complainant was attempting to forward his calls was out of service. (Exhibit 4, p. 9.) AT&T states that the additional restrictions challenged by Complainant are barred by the statute of limitations.

We find that issues regarding service restrictions two years prior to filing this complaint are barred by the statute of limitations. Service restrictions, like service quality issues, are obvious. Complainant knew AT&T restricted his long distance service due to ongoing billing disputes. Complainant's testimony has not provided any information that could toll the statute of limitations on this issue. Thus, we will not consider the earlier service restrictions.

We find that AT&T did not improperly restrict Complainant's long distance service after Complainant brought an informal complaint to the Commission, but do so reluctantly. AT&T's tariff permits long distance restrictions if the full amount of a disputed bill is not placed on deposit with the Commission. Since Complainant did not deposit the full amount, AT&T restricted his long distance service. However, CAB had told Complainant his service would not be restricted and that they would contact AT&T. Under the circumstances, AT&T should not have restricted Complainant's service without

first telling Complainant and CAB that Complainant had not deposited the full disputed amount with the Commission and permitting Complainant to correct that omission. The other alleged restriction was instead a problem with another number. Complainant could have forwarded his number to other numbers but states he did not try to. We find that AT&T did not improperly restrict Complainant's long distance service in that instance.

5. Defendants Did Not Wrongfully Limit Complainant to Written Contacts

Complainant alleges AT&T and Pacific improperly restricted Complainant's contacts with them. Complainant also alleges that AT&T could not restrict his contacts, because AT&T does not have a tariff provision, which permits such restriction. AT&T and Pacific assert that Complainant's contacts with their employees were harassing and unlawful, in that Complainant recorded calls without permission.

In D.95-07-054, we adopted consumer protection rules for customers of competitive local exchange carriers (CLEC). (D.95-07-054, Appendix B.) In those rules, we did not address restricting contacts between the customer and a CLEC such as AT&T; therefore, we did not require AT&T to tariff such restrictions. In the absence of an AT&T provision governing restricted contacts, it is reasonable and consistent with our stated intent to protect CLEC customers from unfair business practices to use Pacific's Rule 11 as a guideline in reviewing AT&T's actions. Pacific's Rule 11 provides that, if the utility receives calls from a customer who intends to annoy and uses obscene language or threatens to inflict injury, the utility "shall make reasonable efforts to persuade the customer not to place such calls, including refusal to transact business with the customer except by written communication." The testimony generally supports Defendants having grounds to impose the restriction, although there is little to document any

threats made by Complainant. Complainant provided documentation that showed Pacific and AT&T both believed that Complainant made calls with the intent to annoy. (Exhibit 1, Attachment 7.) In addition, Pacific documented that verbal threats were made in person to Pacific employees. (*Id.*) AT&T presented evidence that Complainant placed calls to employees' homes and that those employees felt threatened. (Exhibit 4, pp. 6-7.) All parties concur that Complainant recorded calls with Defendants' employees without their consent.

Complainant believes Pacific imposed the written restriction because he filed an informal complaint with the Commission's Consumer Affairs Branch. Although Pacific restricted Complainant's contacts after Complainant presented his informal complaint, there is nothing on the record that establishes a link between the two. AT&T imposed a written contact restriction after Complainant had been its customer for approximately two years and independent of any complaint to the Commission.

We find Complainant has not proved that AT&T and Pacific improperly imposed a written contact restriction. Although we find Defendants had grounds to impose the restriction, we also note that the restriction appears to have exacerbated strained relationships without simultaneously resolving Complainant's ongoing issues. In addition, restrictions on contacts do not support prompt resolution of telecommunications problems faced by small businesses. Complainant's proposal that we order a single contact for his communications problems is not a workable solution, because AT&T appears to have tried that route without success. As discussed below, we will order AT&T to provide Complainant with an alternate avenue to report his communications problems.

6. Relief Awarded to Complainant

As discussed above, we find relief is necessary to ensure that in the future Complainant does not encounter the multitude of problems he has experienced in the past. By this decision, we order AT&T to provide Complainant with on-line management of his business telecommunications needs, including, if feasible, service quality monitoring and trouble reporting, access to listings information and requests for changes to listings, and billing information. AT&T shall waive nonrecurring charges for setting up on-line management of Complainant's telecommunications needs other than charges for necessary equipment. By access to computer-based on-line management of his business lines, Complainant should have the means to promptly address future problems without escalating his complaints.

Appeal

The decision of the presiding officer, ALJ Grau, was mailed on March 14, 2003. Pursuant to rule 8.2 of the Commission's Rules of Practice and Procedure, Complainant filed an appeal of the Presiding Officer's Decision (POD) on April 14, 2003. Respondents filed responses to the appeal on May 2, 2003, after receiving a filing extension from the ALJ.

Complainant's appeal contends that the POD erred in addressing certain facts and in reaching conclusions on alleged violations. Complainant states the POD should have found that repair records were altered and evidence was concealed concerning listings and service quality issues. Complainant contends that failing to penalize AT&T after finding it violated his right to privacy is legal error. Respondents assert Complainant reargues his position, inserts new evidence, and raises causes of action that are barred by the statute of limitations. Respondents state the POD contains no legal or factual error, so Complainant's appeal should be denied.

Complainant's allegations that Pacific altered, destroyed, or concealed repair records and concealed service quality issues is not established in this proceeding. The POD noted that there were discrepancies between Complainant's and Pacific's records but did not find those discrepancies resulted from improper conduct by Pacific. Complainant's service quality problems arose seven years ago, and there is no requirement that utilities retain records that long. The POD correctly examined Complainant's service quality problems as an ongoing issue and did not narrow the inquiry to periods outside the statute of limitations. The statute of limitations is irrelevant, because the POD found no violation of our rules or regulations in the handling of Complainant's service quality problems. Although there were problems, there was insufficient information to conclusively establish that those problems were the result of defective copper pairs, or two sets of defective copper pairs.

Complainant asserts the POD should have fined Pacific and AT&T for wrongly restricting complainant to written contacts and should rescind those restrictions. The POD's finding that Pacific and AT&T justifiably imposed the restrictions is properly based on a review of the circumstances (specifically, harassment and a threat) that led to their imposition. The reasons for these contacts, Complainant's concerns about his level of service quality and listings issues, is not resolved. We can and do recommend that Complainant and Respondents address the written contact restriction once Complainant has pursued and finalized all his administrative and legal remedies. Until this seven-year-old dispute is resolved, the likelihood of improved communication is doubtful.

Complainant states the POD referred to his residential listing as providing his partial residential address, which was incorrect because his residential address never should have been published. We have corrected the POD to

acknowledge that Complainant's residential address was published when Complainant had requested that a post office box be used. AT&T responds that the POD's inaccuracies do not require a change in the result, because privacy allegations concerning Complainant's residential address are barred by the statute of limitations. We agree with AT&T on this point, and we have corrected the POD's analysis to find that litigation of privacy concerns for publishing Complainant's residential address in 1998 is barred by the statute of limitations. Complainant also alleges that his residential address was published in AT&T's directory assistance every two months in 2001 but acknowledges that he did not provide any documentation to prove when those listings changed. Without evidence to support that allegation, we are unable to make any findings on that issue in this proceeding. However, we are concerned that AT&T lacks sufficient controls to prevent the release or publishing of non-listed on non-published information and require AT&T to furnish a compliance report.

Complainant recommends we assess \$23 million penalties for violations of our rules and regulations. We impose substantial penalties, as requested by Complainant, where we have found widespread violations of our rules and regulations, but this case does not provide a basis for such findings. We have imposed penalties in complaint cases for violations of our prior orders if those violations are not cured prior to the filing of the complaint. (*See generally Strawberry Property Owners Assoc. vs. Conlin-Strawberry Water Co.*, D.99-11-044, 1999 Cal. PUC LEXIS 875 **8-11.) Here, there is no violation alleged of a specific order directed to Pacific or AT&T.

Except for the modifications addressed herein, Complainant's appeal lacks merit and is denied.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Janice L. Grau is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Complainant had four telephone lines with Pacific, two residential and two business, that he moved to AT&T's resale competitive local exchange service in April 1997, because he was dissatisfied with Pacific's service quality.

2. Complainant continued to experience service quality problems under AT&T's resale service and also faced problems with incorrect listings, publishing his home address with his business listing, and incorrect billing.

3. Complainant's service quality problems included outages, static, and the inability to complete credit card transactions and facsimile transmissions. Pacific made necessary repairs, including the replacement of a defective DAML unit, and Complainant has had no service quality problems since six months prior to the filing of this complaint.

4. Complainant moved his residential lines to AT&T's broadband service in November 1999 when AT&T began offering that service. Complainant experienced listings and billing problems after switching to broadband.

5. Complainant has a dispute with Pacific over \$6.00 charged for a jack that he states was already there.

6. Pacific's records, to which Complainant did not have access prior to filing this complaint, show listings changes by date and phone number and provide Complainant with accurate information on when his listings changed.

7. AT&T did not address overcharges for incorrect listings AT&T stated were barred by the statute of limitations.

8. Complainant's residential number, designated to be non-published, was published in directory assistance between April 2000 and June 2000 and between

May 18 and June 7, 2001. Complainant's residential address was published in directory assistance in 1998.

9. Pacific and AT&T restricted Complainant to written contacts with them.

10. AT&T restricted Complainant's long distance service after Complainant did not deposit the full amount of the disputed bill with the Commission.

11. Complainant's appeal has not shown the POD failed to make required findings or committed legal error. However, the appeal pointed out inaccuracies in the POD, which are corrected herein.

Conclusions of Law

1. Complainant has the burden of proving violations of our rules and regulations.

2. The statute of limitations bars claims not filed within two years of when the claim accrues.

3. The statute of limitations bars Complainant's service quality claims beyond two years prior to the filing of the complaint. The statute of limitations for the purpose of calculating credits owed is tolled by Complainant's recent discovery of when his listings changed. The statute of limitations bars Complainant's earlier service restriction claims and allegations of privacy violations for publishing in 1998 Complainant's residential address in directory listings.

4. AT&T did not improperly restrict Complainant's long distance service.

5. It is reasonable to require AT&T to refund overcharges for incorrect listings.

6. AT&T violated Section 2891.1 when it released information that allowed Complainant's residential number to be published in directory assistance between April 2000 and June 2000 and between May 18 and June 7, 2001 and on AT&T's Internet directory on or around June 24, 2001.

7. It is consistent with the Commission's consumer protection rules for customers of competitive local exchange carriers to use Pacific's tariffed contact restriction as a guideline in reviewing AT&T's actions where the Commission did not expressly require AT&T to tariff such a restriction.

8. Pacific had sufficient grounds to restrict Complainant to written contacts under Pacific's Rule 11. AT&T had sufficient justification in restricting Complainant to written contacts.

9. It is reasonable to ensure that AT&T is in compliance with statutes and regulations governing the release and publishing of non-listed and non-published information by requiring AT&T to provide a compliance report.

10. It is reasonable to require AT&T to provide Complainant with on-line management of his business telecommunications needs and to require AT&T to waive nonrecurring charges other than charges for necessary equipment for setting up that on-line management.

11. It is reasonable to require Pacific to refund the \$6.00 jack charge if it has not issued that credit.

12. Complainant's appeal lacks merit and is denied.

13. It is reasonable to make this order effective today in order to ensure Complainant has more comprehensive management of his telecommunications needs.

O R D E R

IT IS ORDERED that:

1. AT&T Communications of California Inc. (AT&T) shall refund overcharges for incorrect listings as set forth in this decision.
2. AT&T shall provide Complainant with on-line management of his business telecommunications needs and shall waive nonrecurring charges other than charges for necessary equipment for setting up that on-line management.
3. AT&T shall provide a report addressing compliance with Pub. Util. Code § 2891.1, as set forth in this decision, to the Commission's Telecommunications Division within 60 days of the effective date of this order.
4. Pacific Bell Telephone Company shall refund Complainant \$6.00.
5. The complaint is granted insofar as set forth in this decision and these ordering paragraphs and is otherwise denied.
6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.